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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re GILBERT E., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

GILBERT E.,

Defendant and Appellant.

B162851

(Los Angeles County
Super. Ct. No. VJ26418)

APPEAL from an order of wardship of the Superior Court of Los Angeles County, Steff Padilla, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Modified and, as modified, affirmed.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Marc J. Nolan, Supervising Deputy Attorney General, and Steven E. Mercer, Deputy Attorney General, for Plaintiff and Respondent.

Gilbert E., a minor, appeals from the order of wardship (Welf. & Inst. Code, § 602) entered following a determination that he committed first degree residential burglary (Pen. Code, § 459; count one) and grand theft of personal property (Pen. Code, § 487, subdivision (a); count two). He was placed home on probation for a maximum theoretical period of confinement of six years eight months.

In this case, we accept respondent's concession that appellant's maximum theoretical period of confinement must be reduced. Moreover, we hold various probation conditions must be modified to avoid constitutional infirmity.

FACTUAL SUMMARY

Viewed in accordance with the usual rules on appeal (*In re Dennis B.* (1976) 18 Cal.3d 687), the evidence, the sufficiency of which is undisputed, established that on May 3, 2002, appellant stole personal property worth over \$400 from a home in Whittier after burglarizing it to commit the theft.

CONTENTIONS

Appellant contends: (1) "[t]he juvenile court erred in aggregating the period of confinement for counts one and two in violation of Penal Code section 654" and (2) "[t]he juvenile court imposed conditions of probation that are unconstitutional."

DISCUSSION

1. Appellant's Maximum Theoretical Period Of Confinement Must Be Reduced.

a. Pertinent Facts.

After the court found true the allegations that appellant committed the present offenses, the court ordered, "Count 1 and count 2 are felonies with maximum term of confinement of six years and eight months."¹ Appellant urged the order was erroneous because count two "merge[d]" into count one. The court replied "That's correct" and apologized. The prosecutor asked how the counts could merge, urging the offenses were separate crimes. The court indicated the People were correct, noting that appellant exited

¹ We note the upper term on count one was six years, and grand theft of personal property is punishable by imprisonment either in the county jail for not more than one year, or in state prison.

the house with the property. The court subsequently ordered that appellant's maximum term of confinement was six years and eight months.²

b. *Analysis.*

Respondent concedes that Penal Code section 654,³ barred the multiple punishment reflected in the court's calculation of the maximum theoretical period of confinement. (*People v. McFarland* (1962) 58 Cal.2d 748, 762; see *In re Jose P.* (2003) 106 Cal.App.4th 458, 469.) We will modify the calculation so that it provides only for the longest potential term of imprisonment. (Pen. Code, § 654.)

2. *Probation Condition Numbers 15, 16, and 21 Must Be Modified.*

As to probation condition numbers 15, 16, and 21 of appellant's probation, the court told appellant: (1) "you're not to associate with anyone disapproved of by your parent or probation officer"; (2) "you're not to have any dangerous or deadly weapon in your possession, nor remain in the presence of any unlawfully armed person"; and (3) "you're to not use or possess narcotics, controlled substances, poisons, or related paraphernalia; you're to stay away from places where users congregate[,]" respectively.

Appellant claims the probation conditions should be modified as indicated below in italics, otherwise the conditions are unconstitutionally vague and overbroad:

(1) probation condition number 15: "You're not to associate with anyone *known to you to be* disapproved of by your parent or probation officer"; (2) probation condition number 16: "[y]ou're not to have any dangerous or deadly weapon in your possession, nor remain in the presence of any *person known to you to be an* unlawfully armed person"; and (3) probation condition number 21: "[y]ou're to not use or possess narcotics, controlled

² At disposition, the court entered an order of wardship, ordered that custody of appellant be taken from his parents and guardians, and ordered that appellant's custody, care, and control be placed under the supervision of the probation officer. The court also ordered that appellant was permitted to remain in the home of his parents.

³ Penal Code section 654 provides, in relevant part, that "[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

substances, poisons, or related paraphernalia; you're to stay away from places where *you know narcotics* users congregate.” We agree. (Cf. *In re Justin S.* (2001) 93 Cal.App.4th 811, 814-816; *People v. Lopez* (1998) 66 Cal.App.4th 615, 627-629; *People v. Garcia* (1993) 19 Cal.App.4th 97, 101-103.)

DISPOSITION

The order of wardship is modified by striking eight months from the court's calculation of appellant's maximum theoretical period of confinement, with the result that appellant's total maximum theoretical period of confinement is six years for count one, and by modifying probation condition numbers 15, 16, and 21, as reflected in the preceding paragraph and, as modified, the order of wardship is affirmed.

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CROSKEY, J.

We concur:

KLEIN, P.J.

KITCHING, J.